

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Edgar R. Fryer, Jr.,)	C/A No. 0:10-2811-JFA-PJG
)	
Plaintiff,)	
v.)	ORDER
)	
Accutrex Products, Inc.; Carlton Conrad,)	
General Manager; Samuel Bruckner, Vice)	
President; Martin P. Beichner, Jr., CEO,)	
)	
Defendants.)	
_____)	

The *pro se* plaintiff, Edgar R. Fryer, Jr., brings this action against his former employer and its management alleging various claims under the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 *et. seq.*

The Magistrate Judge assigned to this action¹ has prepared a thorough Report and Recommendation and suggests that the defendants' motion to dismiss should be granted in part.² The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

¹ The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b)(1).

² An order was issued pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975) notifying plaintiff of the summary dismissal procedure and possible consequences if he failed to adequately respond to the motion to dismiss. The plaintiff did not respond to the motion. The Magistrate Judge issued a second order allowing the plaintiff additional time to advise the court whether he wished to continue to prosecute this action. The plaintiff then filed a response to the defendants' motion to dismiss.

The parties were advised of their right to file objections to the Report and Recommendation, which was entered on the docket on August 2, 2011. However, neither party submitted objections. In the absence of specific objections to the Report of the Magistrate Judge, this court is not required to give any explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983).

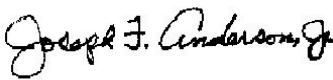
After carefully reviewing the applicable laws, the record in this case, and the Report and Recommendation, this court finds the Magistrate Judge's recommendation fairly and accurately summarizes the facts and applies the correct principles of law. The Report is incorporated herein by reference.

Accordingly, the defendants' motion to dismiss (ECF No. 16) is granted in part. Defendant Beichner, not having been served within the additional 30-day period allowed by the Magistrate Judge under Rule 4(m), is hereby dismissed pursuant to Fed. R. Civ. P. 12(b)(5), 12(b)(2) and 4(m). The plaintiff's ADEA claims against the individual defendants Bruckner and Conrad are also dismissed.

The Magistrate Judge recommends that the plaintiff be allowed to amend his complaint. As the plaintiff has submitted a proposed amended complaint, this case is referred back to the Magistrate Judge for her review and consideration of same.

IT IS SO ORDERED.

September 8, 2011
Columbia, South Carolina


Joseph F. Anderson, Jr.
United States District Judge